* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ CRL.REV. PETITION NO. 67/2003

Reserved on: 08th February, 2007.
Decided on: February 26, 2007.

K.V. KULKARNI …… PETITIONER
Through: Ms. Vasudha Indurkar, Advocate

VERSUS

STATE (C.B.I.) …….RESPONDENTS
THROUGH: Mr. R.M. Tiwari, Advocate

CORAM:
Mr.Justice S. Ravindra Bhat

1. Whether reporters of local papers may be allowed to see the judgment.? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Mr.Justice S. Ravindra Bhat:

1. The revision petitioner, who is arrayed as accused No. 1 (A-1) challenges an order dated 23.8.2002 by which, he, along with other accused, was charged with abusing his official position, to obtain undue pecuniary advantages for himself and others, in allowing bill purchase facilities to Sh.Vinay Mehra and also in sanctioning advances without approval of the competent authority, thus allowing one M/s. Harrisons Tire Co., Sonepat, to avail various bank limits. He stands charged of commission of offences under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947.

2. The FIR and charge-sheet against the petitioner and others accused that pursuant to a criminal conspiracy to cheat the Bank of India, the petitioner, a Chief Manager of the Bank, unauthorizedly allowed various facilities like Cash Credit Loans, Bill Purchase Loans, to M/s. Harrisons Tire Co. on the basis of forged goods receipts and thereby caused loss (to the Bank) to the tune of Rs. 89,72,785.44 with corresponding gain to the second accused. It was alleged that one M/s. Kanishka Tyre and Tubes had secured financial assistance from the bank and mortgaged its factory premises, machinery etc. and could not secure financial assistance from any other bank. The company, facing a financial crunch for several reasons urgently needed to raise money; A-2 allegedly approached the petitioner for loan facilities, and with the knowledge of the latter set up a new concern called M/s. Harrisons Tire Co. It was alleged that the said concern was only on paper, set up for the purpose of obtaining a loan. The proposal for loan falsely showed the second accused and the third accused as functionaries of M/s. Harrisons Tire Co. The proposal for Rs. 62.08 lakhs fell within the sanctioning authority of the Zonal Office and beyond the powers of petitioner.

3. The prosecution alleged that the petitioner failed to carry out pre-verification of the proposal, failed to visit the factory and recommended the case for approval. The proposal dated 3.10.1984 was sent belatedly to the Zonal Office on 30.1.1985; in the meanwhile the petitioner unauthorizedly allowed advances to the tune of Rs. 23 lakhs. It was also submitted by the prosecution that the petitioner failed to carry out post sanction inspection and allowed Cash Credit and Bill Purchase limits in the absence of stock statements. It was also alleged that he re-purchased bills to show favour to the company

though the bills had been returned un-paid.

4. After considering the FIR, the charge-sheet and the materials disclosed the trial court proceeded to frame charges against all the accused including the petitioner.

5. It is contended by Ms. Vasudha Indurkar, learned counsel that the Court was not justified in framing charges, as it overlooked the inordinate delay in the filing of the FIR. The incident alleged took place in 1984-1986 but the FIR was filed only in 1992. Learned counsel also submitted that the petitioner at worst was guilty of error in judgment but could not be saddled with criminal conduct and charged for committing offences.

6. Learned counsel submitted that the view taken by the Court that the petitioner had exceeded his sanctioning limit was without foundation; she relied upon a copy of the document D-149, i.e. a letter written by the Bank of India on 6.9.1993 detailing the various circumstances including the copies of the proposal and the sanctions etc. She urged that the assumption that M/s. Harrisons Tire Co. was a paper concern, was utterly unfounded, as every commercial venture is initially floated on paper – what has to be seen is the soundness of the concern and its ability to re-pay the advances. Counsel contended that all approvals for the proposals were within the limits and the allegation of the petitioner over-stepping his authority were groundless. It was also contended that the Bank had in fact filed a civil suit for recovery of the amounts payable by M/s. Harrisons Tire Co. and the petitioner, who was only a Chief Manager could not be made a scapegoat. She endeavoured to rely on the copies of the delegations of powers in the Bank of India to submit that for various purposes different limits were permissible to

officials holding various ranks.

7. Learned counsel relied upon the judgment of the Supreme Court reported as *Union of India vs. Prafulla Kumar Samal and Anr.*, AIR 1979 SC 366 to say that courts while considering whether to frame charges or not, have to weigh and sift evidence for the limited purpose to find out if a *prima facie* case against the accused were made out. The Court, it was submitted, should consider broad probabilities in order to satisfy itself whether grave suspicion against the accused (which has not been properly explained) exists. In the present case, there was no iota of material to support criminality of the petitioner's conduct which at worst can be termed as error in judgment.

8. The impugned order would show that much the same submissions, that were made in the course of the present proceedings were advanced on behalf of the petitioner. The impugned order in so far as it relates to framing of charge against the petitioner reads as follows:

> *4."The prosecution case briefly noticed is that there was a criminal conspiracy to cheat the bank, pursuant to which, A.1 in abuse of his official position as a public servant unauthorizedly allowed various facilities like cash credit loan, bill purchase loan etc. to M/s. Harrison Tyre Company, on the basis of forged goods receipts and a loss to the tune of Rs. 8972785.44 had been caused to the bank, with corresponding wrongful gain to A.2.*
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> *5.The evidence collected has shown that M/s Kanishka Tyre and Tubes was taking financial assistance from Pubjab National Bank and had mortgaged its factory premises, machinery and stocks, with the said bank and could not take financial assistance from any other bank. It is shown that the said company, facing financial crunch for several factors, was in urgent need to raise money, against which backdrop A.2 approached A.1*

for loan facilities. There is evidence to show the A.2 within the knowledge of A.1 set up a new company in the name of Harrison Tyre company, floated only on paper for purposes of obtaining loan. The application supplying false information about its address, strength of employees manufacturing process etc. was actually Manager (Finance) with Kanishka Tyres, besides two others as Directors. The proposal for loan was to the tune of Rs. 62.08 lacs, which was within the sanctioning authority of zonal office and beyond the powers of A.1, it being above Rs. 50 lacs. A.1 failed to carry out pre-verification of the proposal, by visit to the factory premises and recommended the case for approval by the superior office. The proposal-dated 03.10.84 was sent belatedly to zonal office on 30.01.84 and in the meanwhile A.1 unauthorizedly allowed advances to the tune of Rs. 23 lacs.

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9. The arguments as noticed above cannot help A.1 escape charge and trial. So long as it cannot be denied that the evidence shows there was procedural lapses, in the face of circumstance that these lapses were occurring with full knowledge of the fact that M/s Harrison Tyre Company was seemingly functioning only on papers, the rule of grave suspicion demands that A.1 must join the other accused in facing the charge of criminal conspiracy. The delay in FIR, or the fact that it followed on the close heels of a writ petition preferred by A.1 questioning the legality of the departmental action, cannot render the evidence that has been collected suspect. There is and can be no parity between error of judgment by judicial authority and the acts of commission and omission attributed to A.1."

9. Apart from the above order on charge, I have considered the copy of the D-149 produced on behalf of the petitioner. The said document discloses that *inter alia* no collateral security was proposed or obtained by the Branch and the credit facility was released after guarantees of two Directors were furnished. The bank also stated that no Stock Statements were required to be submitted by M/s. Harrisons Tire Co. It has also emerged that the petitioner did not visit the factory of Kanishka Tyres and Tubes Limited on 17.4.1987. Para (xiii) of D-149 recorded that the proposal for grant of Credit Facility was put up by the Branch, of which the petitioner was the Chief Manager in October 1984

and sent to the Zonal Office in 1985, recommending aggregate limit of Rs. 62.08 lakhs. The Branch while forwarding the proposal had already released hypothecation loan of Rs. 15 lakhs, Later of Credit Facilities worth Rs. 10 lakhs and IDBI co-acceptance of Rs. 2.72 lakhs. Also the Branch started purchasing bills at the request of the borrowers.

10. At the stage of order on charge though the Court is required to consider the broad probabilities and sift the evidence, it is not expected to go into details. If some reasonable material pointing to implication and involvement of the accused exists, it is justified in framing the charge. In the present case, all the materials were considered carefully by the trial court – these included D-149. The materials pointed to the petitioner not verifying the status of the concern and in proceeding to release the facilities before January 1985 i.e. before approval by the competent authority. The aggregate value of the proposed advances were above Rs. 62 lakhs i.e. exceeding the total limit which the petitioner was empowered to sanction. At this stage, the correctness of his version that the individual facilities permitted to the borrower were within his limits is a matter of defence. The fact remains that bills were re-purchased and continued to be re-purchased even after the borrower defaulted in his liability.

11. After considering the submissions made and the reasoning of the trial court, I am of the considered opinion that the approach adopted by it cannot be termed as either materially irregular or contrary to law. Therefore, this Court would not be justified in exercising its revisional jurisdiction to interfere with the order on charge.

12. In view of the above conclusions, the revision petition has to fail; it is accordingly dismissed without any order as to costs.

February 26, 2007 (S. RAVINDRA BHAT)
dkg JUDGE